

Rule 18, Ariz. R. Crim. P.

Response to Motion to Permit Jurors to View the Scene of the Crime

While the trial court has discretion to allow jurors to view the scene of a crime, it is rarely appropriate for the court to grant such a view because a view rarely provides any more information than photographs, diagrams, and testimony. In addition, the conditions at the scene have often changed since the crime occurred in ways that may mislead the jurors.

The State of Arizona, in response to the defendant's "Motion to Permit Jurors to View the Scene of the Incident," asks this Court to deny the motion. The following Memorandum supports this Response.

MEMORANDUM OF POINTS AND AUTHORITIES

The determination of whether to permit jurors to view the scene of an incident is within the discretion of the trial court. *State v. Mauro*, 159 Ariz. 186, 204, 766 P.2d 59, 77 (1988); *State v. Prewitt*, 104 Ariz. 326, 333, 452 P.2d 500, 507 (1969); *Duke v. State*, 49 Ariz. 93, 64 P.2d 1033 (1937). However, the court should only invoke this authority "when it is reasonably certain to be of substantial aid to the jury in making its determination." *Mauro, supra, citing State v. Zumwalt*, 7 Ariz. App. 348, 351, 439 P.2d 511, 514 (1968). A reviewing court will not find that denying the jury a view of the scene is an abuse of discretion unless it appears "almost to a certainty that such denial deprived the jury of material assistance in evaluating the evidence and that such deprivation was in fact prejudicial to the defense." *State v. Money*, 110 Ariz. 18, 25, 514 P.2d 1014, 1021 (1973).

In *Money*, the Arizona Supreme Court found that the trial court properly denied a defense motion to have the jury view the scene. The Court found that the view would not materially assist the jurors in evaluating all of the evidence. Instead, viewing the

scene might mislead them because of changes in “the time of the year, the lighting and other possible changed conditions in the area.” *Money, supra* at 25, 514 P.2d at 1021. In other words, a jury visit is of questionable value where uncertain factors may have changed the scene. *State v. Mauro*, 159 Ariz. 186, 204, 766 P.2d 59, 77 (1988), *supra*, citing *Hughes v. United States*, 377 F.2d 515 (9th Cir. 1967). In *Mauro*, the defendant moved the trial court to allow the jurors to view the trailer where a homicide was committed. The defendant argued that allowing the jurors to view and examine the scene would allow them to evaluate testimony concerning whether a witness in the trailer could have heard sounds coming from the bathroom. The trial court denied the motion, fearing that the view might mislead the jurors because the premises might have changed since the day of the shooting. The court also felt that the jury could get all necessary evidence through diagrams, photographs, and witness testimony. On appeal, the defense argued that the trial court abused its discretion by refusing to allow the jurors to view the scene. The Arizona Supreme Court found no abuse of discretion. *State v. Mauro*, 159 Ariz. 186, 204, 766 P.2d 59, 77 (1988).

Similarly, in *State v. Avila*, 141 Ariz. 325, 686 P.2d 1295 (App. 1984), the defense moved to have the jurors view the convenience store at which an armed robbery had been committed. Defense counsel argued that the view would allow the jurors to better judge the credibility of two of the prosecution’s witnesses. The prosecutor responded that a number of photographs taken at the scene had been provided to the jurors. The trial court denied the motion, saying that the court did not think it would “add a thing to the case,” given the photographs and witnesses’ testimony.

Avila, 141 Ariz. at 330, 686 P.2d at 1300 (App. 1984). The Court of Appeals found no abuse of discretion. *Id.*

In this defendant's case, the jury need not view the scene to evaluate the evidence. Here, as in *Money*, *Mauro*, and *Avila*, *supra*, jurors have photographs and diagrams of the scene available, as well as testimony from witnesses. The defense's own diagrams and cross-examination can properly address any alleged mistakes in the State's diagrams of the scene. The uncertainty of the possible changes to the crime scene and the surrounding areas may be prejudicial to the State in this case, and the probative value of a jury viewing is minimal because of the possibility of such changes and the ability of the jury to make determinations through other means. Therefore, there is no need for this Court to expend the time and resources that would be necessary to transport the jurors to the crime scene.

Conclusion:

The defendant has failed to show any need to have the jury view the crime scene. Therefore, the State asks this Court to deny the defendant's motion.